IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 13716 of 1996

Between:

1.Mrs. M.Bharathi

2. D.V.S. Soma Raju

3. P.Narasimha raju

4.Ch.Narayana Raju

5. P.Ramakrishna Raju

..... PETITIONERs

AND

1. Hyderabad Urban Development Authority, rep. By its

Vice Chairman and Managing Director, Secunderabad.

2. The State of A.P., rep. By Secretary,

Municipal Administration & Urban Development, Secretariat, Hyderabad.

.....RESPONDENTs

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records from the respondents in File No. 4995/PDI/95-3, dated 25-5-1996 and issue a Writ of Certiorari or any appropriate Writ, order or direction and quash the impugned letter dated 25-5-1996 as arbitrary, unconstitutional and declare the G.O.Ms.No. 51, MA, dt. 5-2-1996 as arbitrary and illegal and consequently direct the

respondents to receive the developmental charges @ Rs.4.00 per Sq.mt.
Counsel for the Petitioner: Sri Srinivasa Rao, Advocate
Counsel for the Respondent No.1: Mr.T.Niranjan Reddy,
Standing Counsel for HUDA.
Counsel for the Respondent No.2: None appeared.

The Court made the following Order:

This Writ Petition is filed, questioning the proceedings dated 25-5-1996 issued in Letter No. 4995/PDI/95 by the first respondent-Hyderabad Urban Development Authority, demanding an amount of Rs.5,00,400/- towards development charges and Rs.5,000/- towards Processing charges, and, further, to declare G.O.Ms.No. 51, Municipal Administration, dated 5-2-1996 as illegal and arbitrary.

The petitioners herein, who claimed to be the owners and possessors of the land to an extent of 5040 Square meters in Survey No. 22 of Somajiguda, in Hyderabad District, have filed an application for change of land use, from recreational use to commercial-cum-residential use. The said application is filed as per the provisions of the Andhra Pradesh Urban Areas (Development) Act, 1975. Initially the application was filed by the petitioners before the second respondent-Government on 23-6-1995, and, after obtaining remarks from the first respondent-Hyderabad Urban Development Authority, the second respondent-Government, agreed in principle, for change of land use, and, issued the notification in Memo No. 19037/I1/95-3,M.A., dated 10-5-1996, notifying draft variations, in exercise of powers under Sub-Section (2) of Section 12 of the Andhra Pradesh Urban Areas (Development) Act, 1975 read with Rule 13-A of the Urban Development Authority (Hyderabad) Rules, 1977. The said draft variations were notified subject to condition, that the applicant should pay development charges to Hyderabad Urban Development Authority, as per the rates notified in G.O.Ms.No. 51, Municipal Administration, dated 5-2-1996, and, also on payment of Rs.5,000/- towards processing fee. Consequent to the said notification issued by the second respondent-Government, the first respondent-HUDA has issued impugned proceedings dated 25-5-1996, demanding development charges and processing fee as per the rates notified in G.O.Ms.No. 51, Municipal Administration, dated 5-2-1996.

The second respondent-Government issued G.O.Ms.No. 51, Municipal Administration, dated 5-2-1996, notifying the increased rates of development charges, and, processing fee, consequent to, amendment of the Urban Development Authority (Hyderabad) Rules, 1977. Though validity of the said Government Order is also questioned in the Writ Petition, but the learned Counsel for the petitioners has confined his arguments only with regard to applicability of the said rates to the case of the petitioners. It is submitted by Sri H.Srinivasa Rao, the learned Counsel appearing for the petitioners that as much as the application filed by the petitioners was on 23-6-1995, before issuance of G.O.Ms.No.51, Municipal administration, dated 5-2-1996, as such, the rates notified in the said G.O. cannot be made applicable to the case of the petitioners. It is submitted by the learned Counsel that as per the provisions under Section 14(2) of the Andhra Pradesh Urban Areas (Development) Act, 1975, coupled with Rule 15 of the Urban Development Authority (Hyderabad) Rules, 1977, the relevant date for collecting development charges, is, the date of the application; as such, increased rates cannot be demanded from the petitioners. The learned Counsel has placed reliance on the judgment of this Court, in the case of *G.Pochaiah Vs. Government of Andhra Pradesh*.

On the other hand, it is submitted by Sri T.Niranjan Reddy, the learned Counsel appearing for the first respondent-HUDA, that as much as it is indicated in G.O.Ms.No.51, Municipal Administration, dated 5-2-1996 that the revised rates will come into effect immediately, from the date of notification; in that view of the matter, the petitioners are liable to pay the increased development charges and processing fee, as per the revised rates notified in G.O. Ms.No. 51, Municipal Administration, dated 5-2-1996.

Having heard the learned Counsels on both sides, in this case, it is to be seen, that application was filed by the petitioners seeking change of the land use, on 23-6-1995, from recreational use to commercial-cum-residential use. The application was filed before the second respondent-Government, and, after calling for remarks from the respondent-Hyderabad Urban Development Authority, the second respondent-Government, agreed in principle, and, notification was issued inviting objections on draft variations. Consequent to issuance of the notification by the second respondent-government, notifying draft variations, and, referring to the same, the first

respondent-HUDA has issued impugned proceedings, demanding development charges and processing fee, as per the increased rates in G.O.Ms.No. 51, Municipal Administration, dated 5-2-1996. In the judgment relied on by the learned Counsel for the petitioners, in the case of *G.Pochaiah Vs. Government of Andhra Pradesh (*1 supra), learned Single Judge of this Court, while considering the provisions under Section 14(2) of the Andhra Pradesh Urban Areas (Development) Act, 1975, and, Rule 15 of the Urban Development Authority (Hyderabad) Rules, 1977, has held, that date of application is the relevant date, and, development charges prescribed and subsisting as on the date of application alone need be paid, since payment of development charges is a condition precedent for conversion of the land use. In the said judgment, the contention advanced on behalf of the respondents, that development charges, as amended subsequent to the date of application, to be paid was rejected, holding, that such contention would run counter to the ordained Legislative environment. Even in this case also, the petitioners have filed application on 23-6-1995, and, development charges were increased vide G.O.Ms.No. 51, Municipal Administration, dated 5-2-1996. In that view of the matter, the ratio decided by this Court in the case of *G.Pochaiah Vs. Government of Andhra Pradesh* (1 supra) supports the case of the petitioners, to accept their contention that development charges and processing fee payable by them, is at the rates as applicable prior to issuance of G.O.Ms.No. 51, Municipal Administration, dated 5-2-1996. Merely because, in G.OMs.No.51, dated 5-2-1996, it is indicated, that the enhanced rates come into force immediately, the same cannot be made applicable to the case of the petitioners. Inasmuch as the petitioners have filed the application on 23-6-1995, they are required to pay the development charges and processing fee only as per the rates which were in force as on the date of their application. In that view of the matter, this Writ Petition is deserved to be allowed to the extent referred above. Inasmuch as no argument is advanced with regard to validity of G.O.Ms.No. 51, Municipal Administration, dated 5-2-1996, I need not go into that aspect.

For the foregoing reasons, the Writ Petition is allowed, quashing the demand dated 25-5-1996 issued in Letter No.4955/PDI/95, for payment of development charges and processing fee as per the rates notified in G.O.Ms.No. 51, Municipal Administration, dated 5-2-1996, and, further, I direct the respondents to collect the charges as per the rates which were subsisting as on the date of the application filed

by the petitioners for change of land use. However, it is made clear that it is open for the respondents to examine compliance of all other statutory provisions which are applicable for issuing final orders for conversion of the land use.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 19 -04-2005.

Msnr.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Vice Chairman & Managing Director,

Hyderabad Urban Development Authority, Secunderabad.

2. The Secretary,Municipal Administration & Urban Development,

Secretariat, Hyderabad

3) 2 CD copies

4) 1 CC to M/sSRINIVASA RAO&VIJAYALAKSHMI